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Article Abstracts

International Human Rights Law
Challenges to the New International
Criminal Court: The Search and Seizure
Right to Privacy

George E. Edwards 323

In July 1998, the international community adopted a treaty establishing the first permanent International Criminal Court (ICC). The treaty empowers the ICC to try individuals who allegedly have perpetrated genocide, war crimes, crimes against humanity, and aggression. Though the treaty and its ancillary instruments provide that wide-sweeping human rights must be afforded to suspects and those accused of crimes, those documents appear to be silent with regard to significant human rights, including the search and seizure privacy right.

This Article examines the treaty's human rights coverage, attempts to define the search and seizure privacy right, and explores the treaty's treatment of that right. It examines the early express incorporation of the right in the draft treaty, and its subsequent deletion from the treaty instruments. This Article argues that although the treaty drafters excised express reference to the right from the treaty during the final days of negotiations, the right survives implicitly within the treaty.

The search and seizure privacy right survives because pursuant to the treaty, all ICC law must be consistent with "internationally recognized human rights" and be without adverse distinction based on broad non-discrimination grounds. Because of the right's international recognition, the ICC must enforce it. To support this conclusion, the Article argues that the search and seizure right is incorporated into the seven sources of law that the ICC must apply when resolving all legal issues. This Article argues that the deleted express search and seizure privacy right provision should be reinstated through the Preparatory Commission or through the Assembly of States Parties. Because such legislative actions may fail, this Article calls upon the ICC, when it hears its first search and seizure case, to declare the existence of the search and seizure privacy right, and to enforce that right fully, through, for example, the ICC's exclusionary rule. The search and seizure privacy right belongs to all—innocent and guilty—and the ICC must ensure that a strong international desire to quell impunity does not compromise the rights of anyone, including the rights of those suspected of or charged with heinous crimes.

Creating Standards and Accountability
for the Use of the WTO Security
Exception: Reducing the Role of Power-
Based Relations and Establishing a New
Balance Between Sovereignty and
Multilateralism

Wesley A. Cann, Jr. 413

Article XXI of the General Agreement on Tariffs and Trade was designed to create a "security exception." It was never designed to create a foreign or domestic policy exception, nor was it designed to create a weapon by which stronger nations could impose their social, political, or economic ideologies on their weaker neighbors. Because the distinction between the protection of "essential security interests" and the advancement of policy agendas has remained intentionally blurred, article XXI has

continued to serve as an implicit basis for the unilateral and discriminatory imposition of restrictive trade measures. These measures, imposed without identifiable standards and without any accountability or effective retaliatory remedy, reflect a power-based approach to international relations that perpetuates an unacceptable imbalance between the realities of national sovereignty and the spirit of a more multilateral form of economic global governance.

This Article substantially questions the prevailing views toward security-based sanctions policy. In doing so, the Article establishes a series of criteria to be employed by any nation contemplating the invocation of article XXI or the use of any other security-based economic sanction. Some of these criteria are directed at duties surrounding the exhaustion of remedies, the use of a least restrictive alternative, necessity, consistency in application, sovereignty and non-intervention. Others are aimed at the actual nature of the threat, the developmental stage of the target country, and the effect of the sanction on non-target nations. Still others are designed to encourage nations to engage in a cost/benefit analysis, encompassing such additional variables as the likelihood of success and the response of third party nations, that would more accurately depict the net security gains and losses that would result from a particular action. After discussing each of these considerations, the Article proposes a variety of mechanisms by which a greater degree of multilateral accountability could be imposed, including a more expansive use of waivers.